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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,916	07/12/2007	Stephen Michael Smith	WITHERS.4647-NY	6576
5409 7590 05/20/2009 SCHMEISER, OLSEN & WATTS 22 CENTURY HILL DRIVE SUITE 302 LATHAM, NY 12110				
EXAMINER WEAVER, SUE A				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
05/20/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/599,916

Applicant(s)

SMITH, STEPHEN MICHAEL

Examiner

Sue A. Weaver

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 5, 6, 8-20, 24, 25, 30-32 and 36-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 6, 8-20, 24, 25, 30-32 and 36-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. The drawings were received on 12/8/08. These drawings are objected to as the lines are still rough and jagged.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the materials as claimed in new claim 39 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.
3. The drawings are objected to because the lead lines in Figures 20a-d do not appear to have any reference numerals. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted

Art Unit: 3781

by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1, 11,12,24,25,30-32,39-45,49 and 50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claims 1 and 49 each recites the limitation "the closure" in line 4. There is insufficient antecedent basis for this limitation in the claim.

.The claim in claim 11 wherein the vent device is disposed on a neck of the bottle appears to be a double inclusion of the relationship now claimed in claims 2 as amended.

8. Claims 24 and 31 each recites the limitation "the vent projection" in line 2. There is insufficient antecedent basis for this limitation in the claim.

In claim 32 the claim for "a one way valve" appears to be a double inclusion of claim 1.

9. Claim 40 recites the limitation "the first steeped portion" in line 2. There is insufficient antecedent basis for this limitation in the claim.

10. In claim 42 "a one way valve" appears to be a double inclusion of claim 2

11. Claim 50 recites the limitation "the fluid vent inlet" in line 8. There is insufficient antecedent basis for this limitation in the claim. Moreover a one way valve on line 11 appears to be a double inclusion of a one way valve on lines 3 and 4

Applicant might find it useful to do an analysis of the claims before submitting the formal copy to avoid these problems..

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

13. Claims 1, 2, 5, 6, 8-12, 16, 24, 25, 30, 36-38, 42-44, 49 and 50 insofar as they are definite, are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hsu '316.

14. Applicant appears to focus on a limited version as shown in 9 and 15-18 with a shaped groove. Note the shaped groove at 34 on the stepped member of Hsu with the one way valve at 36. the closure is defined by member 50 and all define fluid openings communicating with the opening on the threaded bottle 60.

15. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

16. Claims 1,2,8,9,24,25,30,31,36,37,42-45, 49 and 50, insofar as they are definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over Raische '446.

Members 19 and 21 define the first and second annular step portions with a shaped groove at 27. The collar13 secures the vent device to the threaded bottle 22.

17. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claim 1 above, and further in view of Ganson '927.

18. To have formed the device with a plurality of vent apertures would have been obvious in view of Ganson.

19. Claims 2,5,6,8-14,16,38 and 49, insofar as they are definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over Yager '646, of record.

20. Members 14 and 16 define the stepped portion with a shaped groove at 8 and 9. the collar 18 secures the vent device to the threads 21 of the bottle.

21. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 2 above, and further in view of Blackstone '646.

Art Unit: 3781

22. Claims 17 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 2 above, and further in view of Madsen et al '581.

23. To have provided a shut off device for the vent insofar as one is shown would have been obvious in view of Madsen et al at 37

24. Applicant is advised that should claim 17 be found allowable, claim 46 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

25. Claims 18-20 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 17 and 2 above, and further in view of Hsing et al '300.

26. To further provided a fluid cut off valve, insofar as one is shown, in the manner of Hsing et al would have been obvious

27. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 2 above, and further in view of Herb '590.

28. To have provided a plurality of vent inlets in the manner of Herb at 3 would have been obvious.

29. Claims 39-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claim 1 above, and further in view of Schein et al '007.

Art Unit: 3781

30. To have used the well known materials of plastic and silicone rubber for the device would have been obvious in view of the teaching by Schein et al of such materials.

31. Applicant's arguments with respect to claims 1 and 2 have been considered but are moot in view of the new ground(s) of rejection. Claims 3,4,7,21-23,26-28 and 33-35 have been canceled.

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents show other closure arrangements.

33. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on _____.
(Date)

Typed or printed name of person signing this certificate:

Signature: _____

Art Unit: 3781

Registration Number: _____

Certificate of Transmission

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. () _____ - _____ on _____.
(Date)

Typed or printed name of person signing this certificate:

Signature: _____

Registration Number: _____

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548. The examiner can normally be reached on Tuesday-Friday (5:30-4).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor is Anthony Stashick __. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sue A. Weaver/
Primary Examiner, Art Unit 3781